Supreme Court, U.S.
FILED

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No. _____

IN
THE SUPREME COURT OF THE UNITED STATES OF AMERICA

Glenn J. Hopkins,
Petitioner
VS
Godfathers Pizza Inc
Respondent

ON PETITON FOR A WRIT OF CERTIORARI
FROM THE SEVENTH CIRCUIT
COURT OF APPEALS USAP7, N0. 04-4172

For Petitioner:
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QUESTIONS PRESENTED

Issue I.

As to whether or not the Americans with Disabilities act applies to the Federal Courts with the same equivalent force and effect as the act applies to the State Courts, in re Tennessee v Lane, 539 U.S. 941 (2004), requiring the District Courts to make reasonable accommodations for the mentally impaired as a matter of due process?

Issue II.

That it is a hitherto unanswered question by this U.S. Supreme Court as to whether or not the accommodation provisions of the Americans with Disabilities Act creates a cause of action from a failure to accommodate *both the permanent and the temporary impairments* of an otherwise qualified disabled individual, as the test of TOYOTA V. WILLIAMS 534 U.S. 184 (2002) is used to determine if a person has a qualifying impairment, and is not to be used to determine if that person's *other impairments* must also meet the ADA definitions

as a condition to require the employer to accommodate them, in re Chevron v Echazebal?

Issue III.

As to whether or not the District Court and 7th Circuit Court of Appeals is in conflict with this U.S. Supreme Court's policy, in re Edelman v Lynchburg College, 533 U.S. 928, and Chevron U.S. A. Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 843-844 (1984), by excluding from Judicial proceedings the complaint letters as a charge filed with the IDHR on grounds it was not sworn at the time of filing pursuant to District Court rules, requiring a new trial?

Issue IV.

As to whether or not the District Court has denied Hopkins due process of law by failing to recuse herself for lack of proper impartiality due to Hopkins Civil rights action in re; Hopkins v Illinois 03-3274, as is supposedly required under 28 USC-§ 455(a), in re Liteky v United States, 510 U.S. 540 (1994)?

Issue V.

As to whether or not the 7th Circuit Court of Appeals "policy" of restricting appellate review of ADA Summary Judgment proceedings to just discretional review whenever there has been a post trial motion to reconsider under rule 59, *is a form of arbitrary sanctions* that in this case violates the 1st Amendment right to petition for redress, and is an abuse of power that is not within the article III powers of the Court of Appeals?

Issue VI.

As to whether or not Hopkins, as a memory impaired, brain damaged individual, was denied fair due process of law by being allowed to be exploited by the District Court as he was deposed pursuant to the Federal Rules of Civil procedure three years after the events in question without the protection of being represented by Counsel?

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This cause comes before this U.S. Supreme Court on the unanswered questions of as to whether or not; (1) the Americans with Disabilities Act applies in any way to the Federal Courts, and (2) raising for the first time the question *as to how much pain and injury a disabled person must endure as a condition of his employment before he is protected by the accommodation provisions of the ADA in the District Courts*, -Do the accommodation provisions of the ADA proactively protect a disabled employee from the acts of negligent indifference by a covered employer in refusing to accommodate *both the permanent and the temporary impairments* of a qualified individual with a qualifying disability? and (3) is the Court of Appeals policy of restricting review of ADA summary Judgments after a rule 59 motion an abuse of power by the Appeals Court in substantive violation of the 1st Amendment?

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Table of authorities

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2. California Motor Transport 404 U.S. 512-513 (1972), page 24
3. Chevron U.S. A. & NBSP; Inc. v Echazabal, 534 U. S. 991 page 16
4. Chevron U.S. A. Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 843-844 (1984) page 20
5. Degan v United States, 517 U.S. 820 (1996) page 26
6. Dvorak v Mostardi Platt Associates, Inc. 289 F.3d 479, 483 (7th Cir.) page 7
7. Edelman v Lynchburg College, 533 U.S. 928 (2001). page 20
8. Halbert v Michigan 543 U.S. ___ (2005) page 24
9. Jacques v. Clean-Up Group, Inc., 96 F.3d 506, 511 page 17
10. Johnson v Avery, 393 U.S. 483, 485 (1969) page 22
11. Kimbro v. Atlantic Richfield Co., 889 F.2d 869, 878-79 (9th Cir. 1989). (page 17)
12. Liteky v United States, 510 U.S. 540 (1994) page 26
13. Neal v Newspaper Holdings Inc, 349 F.3d 363, 368 (7th Cir. 2003.) page 23
14. Powell v Alabama, 287 U.S. 45 (1932) page 14
15. Thomas v Collins 323 U.S. 516, 65 S. Ct 315, L. ed. 430 (1944) page 22
16. Tennessee v Lane 539 U.S. 941 (2004) page 14

Constitutional provisions

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, *and to petition the government for a redress of grievances.*

Statutory provisions

Title I of the Americans with Disabilities act 42-U.S.C. Sec. 12111(3) Direct threat: The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

Title I of the Americans with Disabilities act 42-USC-Sec.12111(8) Qualified individual with a disability: The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Title I of the Americans with Disabilities act 42-U.S.C. Sec. 12112(5) (a) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or (b) Denying employment opportunities

to a job applicant or employee Who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

Title II of the Americans with Disabilities act, 42-U.S.C. Sec. 12131. - Definitions As used in this subchapter: (1) Public entity: The term "public entity" means (A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) [1] of title 49). (2) Qualified individual with a disability: The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Title II of the Americans with Disabilities act, 42-U.S.C. Sec. 12132. – Discrimination: Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the

services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Rule 59. New Trials; Amendment of Judgments a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to Alter or Amend a Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

-Judicial Notice-

The Definition of the term "washing dishes" as used within this cause describes the use of commercial restaurant type sinks measuring approximately 55 inches high, with three tubs approximately 24-30 inches deep. Approximates have to be used in this case as both Godfathers and the District Court refused Hopkins access to the facility for purposes of measurement and photographs.

Hopkins v Illinois, 03-3274 was a Title II ADA action filed 12-8-2003, dismissed March 29, 2004, on 11th Amendment grounds, and D.C. COURT OF APPEALS v. FELDMAN, 460 U.S. 462. Final judgment entered April 20, 2004, relating to a prior appeal to

this Court identified as Hopkins v Northbrook, No. 03-5882, Certiorari Denied Oct 15, 2003.

Jurisdiction

Hopkins action in the District Court was under the Americans with Disabilities Act, over which the District Court held jurisdiction under 28-U.S.C.-1331. The 7th Circuit Court of Appeals held jurisdiction under 28-U.S.C.-1291, affirmed the appeal on July 13, 2005, and denied a Petition for Rehearing En Banc on October 19, 2005. This U. S. Supreme Court thus has Jurisdiction under 28-U.S.C.-1254 as of 12-15-2005.

Statement of the Case

Hopkins is a disabled person within the definition of the Social Security Administration's rules due to serious spinal impairments defined as a degenerative interveterbral disc disease of the lumbar spine (low back), creating intense pain and difficulty in bending over, and limiting the lifting of any weights above 25 pounds, and has brain damage affecting memory. Hopkins now Petitions this U.S. Supreme Court for a Writ of Certiorari, or

for alternative relief, arising from an action under Title I of the ADA, (Americans with Disabilities Act) in the U.S. District Court of the Central District of Illinois, in which Hopkins was denied the necessary accommodations for his impairments by the District Court, and was given an inaccurate adjudication of his claims by the District Court when the Court followed the rules in an overly stringent manner allegedly due to an antipathy towards Hopkins that can only be accounted for from his having opposed discrimination by a "close friend" and former associate on the State bench in her Court. (Judicial Notice, in re Hopkins v Illinois, 03-3274.)

Hopkins's cause of action in the District Court was under the accommodation provisions of the Americans with Disabilities Act, 42-U.S.C.-Sec.12111(3) and Sec.12112(5), alleging as to Count I, A Failure to accommodate claim based on Hopkins spinal impairments in (a) being made to